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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

IRELAND

1. The Committee considered the initial report of Ireland (CCPR/C/68/Add.3) at its 1235th, 1236th and 1239th meetings, held on 12, 13 and 14 July 1993, and adopted* the following comments:

A. Introduction

2. The Committee expresses its satisfaction at the high quality of the report submitted by the State party, which was detailed, informative and generally well composed, and for the constructive dialogue engaged through a high-ranking delegation. The Committee appreciates, in particular, the fact that the report was published in Ireland by the Department of Foreign Affairs and made available to the public. The willingness of the State party to involve non-governmental organizations in the debate surrounding the reporting process and the openness displayed toward their critical observations were also noted with appreciation. The Committee regards those efforts as a valuable step forward in raising public awareness of the Covenant and stimulating a constructive discussion on the implementation of the human rights enshrined therein.

* At the 1259th meeting, held on 28 July 1993.

3. The Committee expresses its appreciation for the Attorney General's detailed introductory statement and the responses and clarifications he gave in reply to members' questions, which contributed to a constructive dialogue between the Committee and the State party.

B. Positive aspects

4. The Committee welcomes the adherence of Ireland to the Optional Protocol, the withdrawal of its reservation regarding the death penalty and its subsequent adherence to the Second Optional Protocol aiming at the abolition of the death penalty, as well as the announcement that legislative preparations are under way in Ireland with a view to acceding to other major human rights instruments.

5. The Committee also notes with satisfaction the State party's efforts to review existing legislation and policy in a number of key areas covered by the Covenant. In particular, the Committee welcomes the establishment of the post of Minister for Equality and Law Reform to coordinate institutional, administrative and legal reform aimed at combating discrimination; the review of mental health legislation by the Department of Health, with a view to updating existing laws; the review of prison policy presently being carried out under the Programme for a Partnership Government; the examination of religious education; and the creation, under the Ministry of Equality and Law Reform, of a Task Force that also includes members of the "Travelling Community" to advise on the special needs of that community.

6. With respect to the issue of gender equality, the Committee welcomes the recommendations of the Second Commission on the Status of Women aimed at eliminating direct and indirect discrimination based on sex, including, in particular, the proposed deletion of article 41.2.2 of the Constitution.

7. The Committee also notes the efforts undertaken by the State party in the area of human rights education in schools and universities.

C. Factors and difficulties impeding the application of the Covenant

8. The Committee recognizes that the State party has encountered problems stemming from terrorist acts related to the situation outside of its borders but, at the same time, notes with satisfaction that the rule of law has been firmly established in Ireland and that the institutions of government and public order are not under serious threat.

9. The Committee notes that not all the provisions of the Covenant have yet been fully incorporated into domestic law. It wishes, none the less, to emphasize that the international legal obligations in the Covenant have been undertaken by the State party. Accordingly, it must ensure that domestic law is amended, interpreted and applied in accordance with the obligations under the Covenant.

D. Principal subjects of concern

10. The Committee expresses its concern over the status of the Covenant in the domestic legal order and the lack of clarity concerning the resolution of

possible conflicts between the Covenant and domestic legislation. The Committee wishes to underline that, in accordance with article 2 of the Covenant, States parties are required to give effect to all of its provisions and provide an effective remedy for any person whose rights and freedoms, as recognized in the Covenant, have been violated.

11. The Committee expresses special concern over the continuation of the state of emergency declared with the adoption of the Emergency Powers Act in 1976. The Committee notes with concern that the Emergency Powers Act, particularly section 2 thereof, provides excessive powers to law enforcement officials. The Committee also expresses its concern with respect to the Special Court established under the Offences Against the State Act of 1939. It does not consider that the continued existence of that Court is justified in the present circumstances. The measures referred to above are of a character that normally fall to be notified under article 4 of the Covenant. The Committee notes, however, that the State party has failed to inform other States parties of any state of emergency through the Secretary-General of the United Nations, as required under article 4, paragraph 3, of the Covenant.

12. The Committee expresses its concern over the wide discretionary powers generally accorded to law enforcement officials, particularly in view of the increased number of complaints of abuse. It is also not clear that police officials are adequately familiarized with international human rights standards, including the rights and guarantees contained in the Covenant.

13. The Committee emphasizes that access to legal assistance is an essential right under the Covenant and notes that, under the current restrictive system, a proper legal defense could not be ensured for many persons.

14. The Committee emphasizes that the segregation of juvenile offenders is required under the Covenant as well as compliance with strict standards for male and female offenders. The Committee expresses its concern over the use of imprisonment in cases of wilful refusal to obey a court order for payment of money.

15. With respect to freedom of expression and the right of access to information, the Committee notes with concern that the exercise of those rights is unduly restricted under present laws concerning censorship, blasphemy and information on abortion. The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under article 19, paragraph 2, of the Covenant. The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those offices.

16. While welcoming the extension of the definition of the family, the Committee notes that existing laws do not provide for divorce. In that connection, the Committee notes that the continued non-recognition of divorce serves only to exacerbate problems associated with the de facto termination of marriage.

17. The Committee notes with concern the existence of discriminatory distinctions between citizens by birth and those who are naturalized and the discriminatory treatment in some respects of non-nationals, including refugees

and asylum seekers. The Committee also notes that civil servants are unduly restricted with respect to their right to participate in public affairs and the right to strike.

E. Suggestions and recommendations

18. The Committee recommends that the State party take effective steps to incorporate all the provisions of the Covenant into law and ensure that they are accorded a status superior to that of domestic legislation. Notwithstanding that the Covenant cannot be directly invoked in the courts, the need to comply with the international obligations should be taken fully into account by the judiciary. The Committee also recommends that a comprehensive review of existing legislation and practices should be undertaken with a view to ensuring their compatibility with the Covenant. In particular, guarantees against discrimination should be clearly set out and conformity with the Covenant should be ensured. Draft legislation, especially in the area of criminal justice and public security, should also be reviewed to ensure compatibility with the Covenant before its adoption.

19. The Committee strongly recommends that the State party critically examine the need for the existing state of emergency and see that the provisions of article 4 of the Covenant are being strictly observed. The need for the Emergency Powers Act and the Special Criminal Court should also be examined and all practices in that regard should conform to the obligations of the State party under the Covenant.

20. The wide discretionary powers afforded to the police should be reviewed in the light of the Covenant and of the State party's dialogue with the Committee. The Committee emphasizes the importance of the issuance of rules and guidelines and the ensuring of strict adherence by law enforcement officials to rules and guidelines, particularly with respect to powers of search, arrest and detention and the use of firearms. The Committee suggests that adherence to those rules and guidelines should be closely monitored.

21. The Committee recommends that the State party take the necessary measures to ensure the enjoyment of the freedom of expression as set out in article 19 of the Covenant. In this regard, the Committee suggests that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board.

22. The Committee recommends that the State party undertake further measures aimed at achieving equality of the sexes, particularly with regard to women in law enforcement, the legal profession and the judiciary. While welcoming measures recently taken to strengthen legislation with regard to violence against women, the Committee considers that the relevant laws and protections should also extend to cohabiting couples.

23. The Committee suggests that the State party undertake additional affirmative action aimed at improving the situation of the "Travelling Community" and, in particular, facilitating and enhancing the participation of "travellers" in public affairs, including the electoral process.

24. The Committee emphasizes that training in human rights should be systematically provided to law enforcement officials. Police should be well-acquainted with relevant international norms and standard rules including, inter alia, the provisions of the Covenant. Further measures should also be taken to ensure that the provisions of the Covenant are made widely known, particularly within the legal profession and among members of the judiciary. In general, efforts in the area of human rights education in schools and universities should be increased.